

Introduced by

**NORTH DAKOTA CENTURY CODE CHAPTER 15.1-15 -
TEACHER DISMISSAL**

Chapter 15.1-15 of the North Dakota Century Code is created and enacted as follows:

15.1-15-01. Performance reviews - Written reports.

1. a. The school district shall conduct two performance reviews of each individual employed as a teacher, a principal, or as an assistant or associate superintendent during each of the first three years an individual holds such a position. The school district shall prepare written reports of the individual's performance. The school district shall make the first yearly report available to the individual on or before December fifteenth. The school district shall make the second yearly report available to the individual on or before March fifteenth.
- b. If an individual begins employment as a teacher, principal, or assistant principal after January first, the school district shall conduct one review of the individual's performance. The school district shall make the written report available to the individual on or before March fifteenth.
2. Beginning with the fourth year of an individual's employment as a teacher, principal, or assistant superintendent, the school district shall conduct at least one review of the individual's performance each year. The school district shall prepare a written report of the individual's performance and make the report available to the individual on or before March fifteenth.
3. If an individual employed as a teacher, principal, or assistant superintendent takes a leave of absence or a sabbatical, the school district is not required to review the performance of the individual's replacement under this section.

NOTE: Present Section 15-47-27.

**15.1-15-02. First-year teachers - Review of evaluations - Renewal and nonrenewal
of contracts.**

1. If the board of a school district contemplates not renewing the contract of an individual employed as a first-year teacher, the board shall review the individual's evaluations required by section 15.1-15-01 and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual employed as a first-year teacher may be accompanied by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.
3. No claim for relief for libel or slander may be brought regarding any communication made at an executive session of a school board held pursuant to this section.
4. If the board of a school district elects not to renew the contract of an individual employed as a first-year teacher, the board shall provide written notification of the decision, together with a detailed description of the board's reasons, to the individual no earlier than April fifteenth nor later than May first.
5. Failure by the board of a school district to provide the notification required by subsection 4 constitutes an offer to renew the individual's contract on the same terms and conditions as the individual's contract for the current year.
6. For purposes of this section, a "first-year teacher" means an individual teaching for the first school year since obtaining a license to teach.

NOTE: Present Section 15-47-27.1. The definition of a "first-year teacher" was added.

15.1-15-03. Contracts - Renewals - Notice.

1. a. If the board of a school district elects not to renew the contract of a teacher, a principal, or an assistant or associate superintendent for the ensuing school year, the board shall provide written notification of the decision to the individual.
- b. The board may not notify the individual under this section earlier than March first nor later than May first of the school year in which the individual has been employed.
- c. The failure of a board to provide written notice under this subsection constitutes an offer to renew the individual's contract for the ensuing school

- 1 year, under the same terms and conditions as the individual's current
2 contract.
- 3 2. a. No earlier than March first nor later than May first, the board of a school
4 district shall notify each individual offered renewal of a contract of the date by
5 which the individual must accept or reject the contract.
- 6 b. At least thirty calendar days must pass between the notification of each
7 individual, as required by this subsection, and the date by which the individual
8 must accept or reject the contract.
- 9 3. a. In order to accept an offer to renew a contract, including an offer generated by
10 the failure of a board to provide written notice as required by subsection 1, an
11 individual shall provide written notification of acceptance to the board on or
12 before the date required by the board or June first, whichever is earlier. An
13 individual accepting an offer to renew a contract is entitled to a written
14 contract for the ensuing school year.
- 15 b. In order to reject an offer to renew a contract, including an offer generated by
16 the failure of a board to provide written notice as required by subsection 1, an
17 individual shall provide written notification of rejection to the board on or
18 before the date required by the board or June first, whichever is earlier.
- 19 c. If an individual fails to provide notification of acceptance or rejection of an
20 offer to renew a contract, the board is relieved of any continuing contract
21 provisions.

NOTE: Present Section 15-47-27. There is an understanding among the affected parties that this section is suspended during the bargaining process. The committee might wish to determine whether or not this practice should be reflected in the rewrite.

22 **15.1-15-04. Contracts - Contemplated nonrenewal - Reasons - Notice.**

- 23 1. If the board of a school district contemplates not renewing the contract of an
24 individual employed as a teacher, a principal, or an associate or assistant
25 superintendent, the board shall, no earlier than March first nor later than April
26 fifteenth:
- 27 a. Provide written notification of the contemplated nonrenewal to the individual.

- 1 b. Schedule a special school board meeting to be held on or before April
- 2 twenty-first for the purpose of discussing and acting upon the contemplated
- 3 nonrenewal.
- 4 c. Provide written notification of the date, time, and place for the special school
- 5 board meeting to the individual.
- 6 d. Provide written notification of the reasons for the contemplated nonrenewal to
- 7 the individual.
- 8 2. The reasons for the contemplated nonrenewal of the individual's contract must not
- 9 be frivolous or arbitrary. The reasons must be sufficient to justify the contemplated
- 10 nonrenewal and must:
- 11 a. Originate from specific findings documented in the report of the individual's
- 12 performance required by section 15.1-15-01 and relate to the individual's
- 13 ability, competence, or qualifications; or
- 14 b. Originate from the needs of the district in justifying a reduction in the staff.

NOTE: Present Section 15-47-38. Present Section 15-47-38 provides that the board of a school district must notify a teacher of a contemplated nonrenewal no later than April fifteenth. At the request of personnel from the North Dakota Education Association, the rewrite also provides that the notification may not be provided prior to March first.

15 **15.1-15-05. Contracts - Contemplated nonrenewal - Hearing.**

- 16 1. At the special school board meeting required by section 15.1-15-04, the school
- 17 district superintendent shall present testimony or documentary evidence regarding
- 18 the reasons for the contemplated nonrenewal of the individual's contract.
- 19 2. The board of the school district contemplating the nonrenewal of an individual's
- 20 contract may call additional witnesses to present testimony or documentary
- 21 evidence regarding the reasons for nonrenewal.
- 22 3. The individual whose contract is subject to nonrenewal may call witnesses and
- 23 produce evidence necessary to refute the reasons for the nonrenewal.
- 24 4. Each witness appearing on behalf of the board of the school district or the
- 25 individual whose contract is subject to nonrenewal may be cross-examined.
- 26 5. The board shall review all testimony and evidence presented at the meeting and
- 27 make a determination regarding the nonrenewal. If the board determines that the
- 28 reasons for nonrenewal have not been substantiated, the board shall dismiss the
- 29 nonrenewal proceedings.

- 1 6. Unless otherwise agreed to by the board of the school district and the individual
- 2 subject to the nonrenewal, the special meeting must be conducted as an executive
- 3 session of the board, except that:
- 4 a. The individual may invite to the meeting any two representatives, and the
- 5 individual's spouse or one other family member; and
- 6 b. The board may invite to the meeting any two representatives, the school
- 7 district business manager, and the school district superintendent.
- 8 7. The individual subject to the nonrenewal may request one continuance for a period
- 9 of up to seven days. The board of the school district shall grant the request for
- 10 continuance.
- 11 8. No cause of action for libel or slander may be brought regarding any
- 12 communication made in a meeting held by the board for the purposes provided in
- 13 this section.
- 14 9. A determination by the board of a school district not to renew an individual's
- 15 contract is, if made in good faith, final and binding on all parties.
- 16 10. If the board elects not to renew an individual's contract, the board shall provide
- 17 notice of its determination to the individual in writing on or before May first.

NOTE: Present Section 15-47-38. Subsection 1 of the rewrite provides that "the school district superintendent shall present testimony or documentary evidence regarding the reasons for the contemplated nonrenewal of the individual's contract." Present Section 15-47-38 provides that the "administrator shall substantiate the reasons" for the contemplated nonrenewal. The committee may wish to determine whether the section should require a legal burden of proof, such as a "preponderance of the evidence."

Subsection 4 of the rewrite provides that each "witness appearing on behalf of the board of the school district or the individual whose contract is subject to nonrenewal may be cross-examined." Present Section 15-47-38 provides that all "witnesses are subject to questioning for the purposes of clarification."

Subsection 5 of the rewrite provides that the "board shall review all testimony and evidence presented at the meeting and make a determination regarding the nonrenewal. If the board determines that the reasons for nonrenewal have not been substantiated, the board shall dismiss the nonrenewal proceedings." As with subsection 1, the committee may wish to determine whether the section should require reference to a legal burden of proof, such as a "preponderance of the evidence."

Subsection 7 of the rewrite provides that the "individual subject to the nonrenewal may request one continuance for a period of up to seven days. The board of the school district shall grant the request for continuance." Present Section 15-47-38 provides that the board must grant the request for a continuance "unless good cause is otherwise shown." Later in the present section, the board is directed to grant one request for a continuance. Whether or not good cause is otherwise shown is not a requirement in the

second instance. In the interest of consistency as well as articulating current practice, the rewrite requires simply that the board grant the one request for continuance.

1 **15.1-15-06. Discharge for cause - Grounds.** The board of a school district may
2 dismiss an individual employed as a teacher, principal, or assistant superintendent prior to the
3 expiration of the individual's contract for any of the following causes:

- 4 1. Immoral conduct.
- 5 2. Insubordination.
- 6 3. Conviction of a felony.
- 7 4. Conduct unbecoming the position held by the individual.
- 8 5. Failure to perform contracted duties without justification.
- 9 6. Gross inefficiency that the individual has failed to correct after written notice.
- 10 7. Continuing physical or mental disability that renders the individual unfit or unable to
11 perform the individual's duties.

NOTE: Present Section 15-47-38.

12 **15.1-15-07. Discharge for cause - Hearing.**

- 13 1. If the board of a school district contemplates the discharge for cause of an
14 individual employed as a teacher, a principal, or as an assistant or associate
15 superintendent, prior to the expiration of the individual's contract, the board shall
16 provide written notice to the individual at least ten days prior to the discharge date.
17 The notice must:
 - 18 a. State the date and time at which the board will conduct a special hearing to
19 address charges against the individual; and
 - 20 b. State that the individual may demand a list of the charges.
- 21 2. If the individual demands a list of charges under subsection 1, the board shall
22 furnish the list to the individual at least five days before the hearing.
- 23 3. If the individual notifies the board in writing at least two days before the hearing
24 that the individual intends to contest the charges, the board shall produce evidence
25 of the charges at the hearing, together with witnesses who are subject to
26 cross-examination by the individual or by a representative of the individual.
- 27 4. If a witness is a minor and if it is the wish of the witness or the witness's parent, the
28 witness may be accompanied by legal counsel and a parent.

5. At the hearing, the individual may produce evidence and witnesses to refute any charges. Any witnesses produced by the individual are subject to cross-examination.
6. The hearing must be conducted in accordance with chapter 28-32.
7. Unless otherwise agreed to by the board and the individual, the hearing must be conducted as an executive session of the board, except that:
 - a. The individual may invite to the hearing any two representatives and the individual's spouse or one other family member; and
 - b. The board may invite to the hearing any two representatives, the school business manager, and the school district superintendent.
8. The individual may request one continuance for a period of up to seven days. The board of the school district shall grant the request for continuance.
9. No cause of action for libel or slander may be brought regarding any communication made in a hearing held by the board for the purposes provided in this section.

NOTE: Present Section 15-47-38.

15.1-15-08. Alleged child abuse - Discharge - Nonrenewal of contract -

Limitations.

1. If an individual employed as a teacher, principal, or assistant superintendent is the subject of an investigation alleging child abuse or neglect under section 50-25.1-05 and it is determined that no probable cause exists to charge the individual with child abuse or neglect, the board of a school district may neither discharge nor refuse to renew the contract of the individual solely because the individual was the subject of the investigation.
2. If an individual employed as a teacher, principal, or assistant superintendent is the subject of an investigation alleging child abuse or neglect under section 50-25.1-05 and it is determined that probable cause exists to charge the individual with child abuse or neglect, the board of a school district may neither discharge nor refuse to renew the contract of the individual solely because the individual is charged with child abuse or neglect. The board may discharge or refuse to renew the contract of the individual once the individual has been convicted of child abuse or neglect.

3. If an individual employed as a teacher, principal, or assistant superintendent is the subject of an investigation alleging child abuse or neglect under section 50-25.1-05 and it is determined that probable cause exists to charge the individual with child abuse or neglect, the board of a school district may move to suspend the teacher, pending the outcome of the case.

NOTE: Present Section 15-47-38. Present Section 15-47-38 includes a cite to Section 50-25.1-05.1. That section provides that a decision must be made regarding whether or not services are required to provide for the protection and treatment of an abused or neglected child. It appears from the context of present Section 15-47-38 that the intended cite was to Section 50-25.1-05, which provides that "[t]he department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of any report of child abuse or neglect including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the person responsible for the child's welfare or the alleged perpetrator. The department or law enforcement agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found."

15.1-15-09. Suspension during discharge proceeding - Compensation.

1. The board of a school district may suspend an individual employed as a teacher, a principal, or as an assistant or associate superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued.
2. The board shall address the matter of the individual's suspension in an executive session, unless both the board and the individual agree that the matter may be addressed in the presence of others or at an open meeting of the board.
3. If the individual is ultimately discharged for cause, the board may determine the amount of compensation payable to the individual during the period of suspension. If the individual is ultimately not discharged, the board may not apply any reduction to the individual's salary for the period of suspension.

NOTE: Present Section 15-47-38.

15.1-15-10. Discharge for cause - Report to education standards and practices

board. If the board of a school district discharges for cause an individual employed as a

- 1 teacher, principal, or assistant superintendent, the board shall report the discharge to the
- 2 education standards and practices board.

NOTE: Present Section 15-47-38.

- 3 **15.1-15-11. School boards - Communication.** The board of each school district shall
- 4 adopt policies to ensure that channels of communication exist between the board, supervisory
- 5 personnel, and teachers. If the board pursues the discharge of an individual, as provided for
- 6 under this chapter, the board shall ensure that the process is conducted with fairness and
- 7 dignity, according to the provisions of this chapter.

NOTE: Present Section 15-47-38. Present Section 15-47-38 contains the following legislative intent language:

1. The legislative assembly, in recognition of the value of good employer-employee relationships between school boards of this state and the teachers employed in the school systems, the need to recruit and retain qualified teachers in this state, and further in recognition of the many intangibles in evaluating the performance of individual members of the teaching profession, urges that each school board of this state ensure through formally adopted policies, that channels of communication exist between the board, supervisory personnel, and teachers employed within its school system. In the very sensitive area of discharge of teachers for cause prior to the expiration of the term of the teachers' contracts, or in decisions not to renew the contracts of teachers, school boards shall give serious consideration to the damage that can result to the professional stature and reputation of such teachers, which stature and reputation were acquired only after the expenditure of substantial time and money in obtaining the necessary qualifications for such profession and in years of practicing the profession of teaching; and that in all decisions of school boards relating to discharge or refusal to renew contracts, all actions of the board be taken with consideration and dignity, giving the maximum consideration to basic fairness and decency.

Because the purpose of a properly drafted bill should be self-evident, the Legislative Council's drafting manual states that a statement of legislative policy, purpose, or intent should not be used. Therefore, the statement of legislative intent has been omitted from the rewrite.

However, at the request of personnel from the North Dakota Education Association, an attempt was made to include, in new Section 15.1-15-11, some of the language as substantive provisions. The committee will have to determine whether it wishes to retain new Section 15.1-15-11 in its current or in an amended form.